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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT FLUKER,

Petitioner,

v.

ISIDRO BACA, *et al.*,

Respondents.

Case No. 3:17-cv-00299-MMD-VPC

ORDER

This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's motion for appointment of counsel (ECF No. 5) and for initial review under Rule 4 of the Rules Governing Section 2254 Cases. Petitioner has paid the filing fee.

On petitioner's motion for appointment of counsel, the financial exhibits submitted with the pauper application establish petitioner's financial eligibility for appointment of counsel under 18 U.S.C. § 3006A. The Court finds that appointment of counsel is in the interests of justice given petitioner's claims based on allegations of traumatic brain injury and the limitations placed on inmates in accessing, possessing, and presenting their medical records; the potential complexity of the procedural issues involved in presenting the medical evidence referenced in the petition; and petitioner's sentence in the aggregate of 20 to 50 years. In appointing counsel, the Court makes no implicit finding or holding with regard to what evidence, medical or otherwise, potentially might be considered in federal court on the merits and/or on other procedural issues in the context of this action.

1 It is therefore ordered that, the filing fee having been paid, the Clerk of Court will
2 file the petition.

3 It further is ordered that petitioner's motion for appointment of counsel (ECF No.
4 5) is granted. The counsel appointed will represent petitioner in all federal proceedings
5 related to this matter, including any appeals or *certiorari* proceedings, unless allowed to
6 withdraw.

7 It is further ordered that the Federal Public Defender will be provisionally appointed
8 as counsel and will have thirty (30) days to undertake direct representation of petitioner
9 or to indicate to the Court the office's inability to represent petitioner in these proceedings.
10 If the Federal Public Defender is unable to represent petitioner, the Court then will appoint
11 alternate counsel. A deadline for the filing of an amended petition and/or seeking other
12 relief will be set after counsel has entered an appearance. The Court anticipates setting
13 the deadline for approximately one hundred twenty (120) days from entry of the formal
14 order of appointment. Any deadline established and/or any extension thereof will not
15 signify any implied finding of a basis for tolling during the time period established.
16 Petitioner at all times remains responsible for calculating the running of the federal
17 limitation period and timely presenting claims. That is, by setting a deadline to amend the
18 petition and/or by granting any extension thereof, the Court makes no finding or
19 representation that the petition, any amendments thereto, and/or any claims contained
20 therein are not subject to dismissal as untimely. See *Sossa v. Diaz*, 729 F.3d 1225, 1235
21 (9th Cir. 2013).


22 It is further ordered, so the respondents may be electronically served with any
23 papers filed through counsel, that the Clerk will add state attorney general Adam P. Laxalt
24 as counsel for respondents and shall make informal electronic service of this order upon
25 respondents by directing a notice of electronic filing to him. Respondents' counsel will
26 enter a notice of appearance within twenty-one (21) days of entry of this order, but no
27 further response shall be required from respondents until further order of the Court.

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1 The Clerk further will send a copy of this order to the *pro se* petitioner, the Nevada
2 Attorney General, the Federal Public Defender, and the CJA Coordinator for this division.

3 The Clerk additionally will provide copies of all prior filings herein to both the
4 Attorney General and the Federal Public Defender in a manner consistent with the Clerk's
5 current practice, such as regeneration of notices of electronic filing.

6 DATED THIS 27th day of October 2017.

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9 _____
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE